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HOUSE BILL 470

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

R. DAVID PEDERSON

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING INCREASES IN A BASIC SENTENCE OF IMPRISONMENT WHEN A CRIME IS INTENTIONALLY COMMITTED AGAINST CERTAIN PERSONS OR THEIR PROPERTY; ENACTING A NEW SECTION OF THE CRIMINAL SENTENCING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Sentencing Act is enacted to read:

"[NEW MATERIAL] NONCAPITAL FELONIES, MISDEMEANORS OR PETTY MISDEMEANORS AGAINST A PERSON OR HIS PROPERTY BECAUSE OF THE ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, GENDER, SEXUAL ORIENTATION OR DISABILITY OF THE PERSON-- ALTERATION OF BASIC SENTENCE-- SUSPENSION AND DEFERRAL LIMITED. --

A. When a separate finding of fact by the court or

1 jury shows that an offender committed a petty misdemeanor in
2 which a person was intentionally injured or his property was
3 intentionally damaged because of the actual or perceived race,
4 religion, color, national origin, ancestry, gender, sexual
5 orientation or disability of that person, whether or not the
6 offender's belief or perception was correct, the basic sentence
7 of imprisonment prescribed for the offense in Section 31-19-1
8 NMSA 1978 may be increased by thirty days. The sentence imposed
9 pursuant to the provisions of this subsection shall be the first
10 thirty days served and may be suspended or deferred.

11 B. When an offender commits a second or subsequent
12 petty misdemeanor in which a person was intentionally injured or
13 his property was intentionally damaged because of the actual or
14 perceived race, religion, color, national origin, ancestry,
15 gender, sexual orientation or disability of that person, whether
16 or not the offender's belief or perception was correct, the
17 basic sentence of imprisonment prescribed for the offense in
18 Section 31-19-1 NMSA 1978 may be increased by sixty days. The
19 sentence imposed pursuant to the provisions of this subsection
20 shall be the first sixty days served and may be suspended or
21 deferred.

22 C. When a separate finding of fact by the court or
23 jury shows that an offender committed a misdemeanor in which a
24 person was intentionally injured or his property was
25 intentionally damaged because of the actual or perceived race,

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1 religion, color, national origin, ancestry, gender, sexual
2 orientation or disability of that person, whether or not the
3 offender's belief or perception was correct, the basic sentence
4 of imprisonment prescribed for the offense in Section 31-19-1
5 NMSA 1978 may be increased by ninety days. The sentence imposed
6 pursuant to the provisions of this subsection shall be the first
7 ninety days served and may be suspended or deferred.

8 D. When an offender commits a second or subsequent
9 misdemeanor in which a person was intentionally injured or his
10 property was intentionally damaged because of the actual or
11 perceived race, religion, color, national origin, ancestry,
12 gender, sexual orientation or disability of that person, whether
13 or not the offender's belief or perception was correct, the
14 basic sentence of imprisonment prescribed for the offense in
15 Section 31-19-1 NMSA 1978 may be increased by one hundred eighty
16 days. The sentence imposed pursuant to the provisions of this
17 subsection shall be the first one hundred eighty days served and
18 may be suspended or deferred.

19 E. When a separate finding of fact by the court or
20 jury shows that an offender committed a noncapital felony in
21 which a person was intentionally injured or his property was
22 intentionally damaged because of the actual or perceived race,
23 religion, color, national origin, ancestry, gender, sexual
24 orientation or disability of that person, whether or not the
25 offender's belief or perception was correct, the basic sentence

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1 of imprisonment prescribed for the offense in Section 31-18-15
2 NMSA 1978 may be increased by one year. The sentence imposed
3 pursuant to the provisions of this subsection shall be the first
4 year served and may be suspended or deferred. When the offender
5 is a serious youthful offender or a youthful offender, the
6 sentence imposed pursuant to the provisions of this subsection
7 may be increased by one year.

8 F. When an offender commits a second or subsequent
9 noncapital felony in which a person was intentionally injured or
10 his property was intentionally damaged because of the actual or
11 perceived race, religion, color, national origin, ancestry,
12 gender, sexual orientation or disability of that person, whether
13 or not the offender's belief or perception was correct, the
14 basic sentence of imprisonment prescribed for the offense in
15 Section 31-18-15 NMSA 1978 may be increased by three years. The
16 sentence imposed pursuant to the provisions of this subsection
17 shall be the first three years served and may be suspended or
18 deferred. When the offender is a serious youthful offender or a
19 youthful offender, the sentence imposed pursuant to the
20 provisions of this subsection may be increased by three years.

21 G. If the case is tried before a jury and if a prima
22 facie case has been established showing that in the commission
23 of the offense a person was intentionally injured or his
24 property was intentionally damaged because of the actual or
25 perceived race, religion, color, national origin, ancestry,

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1 gender, sexual orientation or disability of that person, whether
2 or not the offender's belief or perception was correct, the
3 court shall submit the issue to the jury by special
4 interrogatory. If the case is tried by the court and if a prima
5 facie case has been established showing that in the commission
6 of the offense a person was intentionally injured or his
7 property was intentionally damaged because of the actual or
8 perceived race, religion, color, national origin, ancestry,
9 gender, sexual orientation or disability of that person, whether
10 or not the offender's belief or perception was correct, the
11 court shall decide the issue and shall make a separate finding
12 of fact regarding the issue.

13 H. As used in this section, "disability" means a
14 physical, developmental or mental impairment that substantially
15 limits one or more of a person's functions, including caring for
16 oneself, performing manual tasks, walking, seeing, hearing,
17 speaking, breathing or learning. "

18 Section 2. EFFECTIVE DATE. --The effective date of the
19 provisions of this act is July 1, 1997.

State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 22, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 470

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.**

Respectfully submitted,

Thomas P. Foy, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 2 Against

Yes: 8

No: Alwin, Vaughn

Excused: Larranaga, Mallory, Rios

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 22, 1997

Mr. Speaker:

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 2 Against

Yes: 8

No: Alwin, Vaughn

Excused: Larranaga, Mallory, Rios

Absent: None

M \H0470

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 22, 1997

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HOUSE BILL 470

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Respectfully submitted,

Thomas P. Foy, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 2 Against

Yes: 8

No: Alwin, Vaughn

Excused: Larranaga, Mallory, Rios

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 26, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

HOUSE BILL 470

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Max Coll, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 13 For 3 Against

Yes: 13

No: Bird, Marquardt, Pearce

Excused: Buffett

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 17, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 470

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
FINANCE COMMITTEE.

Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 2 Against

Yes: 5

No: Payne, Stockard

Excused: Vernon

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 19, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

HOUSE BILL 470

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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Date _____

The roll call vote was 5 For 1 Against
Yes: 5
No: Lyons
Excused: Aragon, Carraro, Ingle, McKibben, Smith
Absent: None

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